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March 8, 2021

APPLICANT'S STATEMENT

APPLICANT/OWNER: Katie Miranda & Ahmed Al Ali
 4345 SW 94th Avenue
 Portland, Oregon 97225

APPLICANT'S REPRESENTATIVE:

NW Engineers, LLC
 Matthew Newman
 3409 NE John Olsen Avenue
 Hillsboro, Oregon 97124

REQUEST: Administrative Decision for implementation of State Measure 49 approval, Significant Environmental Concern for Wildlife Habitat (SEC-h) permit, Geologic Hazard permit for residential development, Variance to Secondary Fire Safety Zone, Forest Practices Standards and Setbacks for property in the CFU-2 zone.

MEASURE 49 STATE FINAL ORDER #: E118605

LEGAL DESCRIPTION: Tax Lot 702; Tax Map 2N1W 32B
 Multnomah County, Oregon

SIZE: 2.0 Acres per Partition Plat No. 2012-047

ADDRESS: 13221 NW McNamee Road
 Portland, Oregon 97231

LOCATION: South side of NW McNamee Road north of NW Skyline Blvd.

LAND USE DISTRICT: CFU-2 District

RELATED CASEFILES: T3-2015-3856, T3-2012-2097, T3-2010-907; SEC 17-97; HDP 3-95

I. APPLICABLE REGULATIONS

A. Multnomah County Comprehensive Plan

B. 2021 Multnomah County Code:

Section 39.4050	Commercial Forest Use CFU-2
Section 39.5500	Significant Environmental Concern
Section 39.4155	Exceptions to Secondary Fire Safety Zones
Section 39.5860	Criteria for Approval of Sec-H Permit
Section 39.5070	Geologic Hazard Overlay
Section 39.820	Variance Approval Criteria
DLSC Conditions	Modification of Measure 49

II. AFFECTED JURISDICTIONS

Fire Protection:	Tualatin Valley Fire & Rescue District
Police Protection:	Multnomah County Sheriff
Schools:	Portland School District
Water:	Well
Roads:	Multnomah County
Drainage:	Multnomah County

III. INTRODUCTION/BACKGROUND

Katie Miranda & Ahmed Al Ali (Applicants/Owners), request Administrative Decision for Implementation of State Measure 49 approval, Significant Environmental Concern for Wildlife Habitat (SEC-h) permit, Hillside Development permit for residential development, Variance to Secondary Fire Safety Zone, Forest Practices Standards and Setbacks for property in the CFU-2 zone.

The 2.0-acre site was created in 2012 per Partition Plat No. 2012-047, and Case T3-2012-2097, is within the Commercial Forest Use-2 Zone with Protected Aggregate and Mineral Sites (PAM) Impact Overlay, Significant Environmental Concern for Wildlife Habitat (SEC-h) overlay, Significant Environmental Concerns for Stream (SEC-s), and Hillside Development (HD) overlay. The property is also located in the West Hills Rural Plan Area. No modification to the PAM Impact Overlay is proposed with this application. Case T3-2012-2097 was modified in 2015 with reduced setbacks (attached). This application requests the same setback reduction that was approved per Case T3-2015-3856 (attached). The Case T3-2012-2097 Decision of the Hearings Officer is attached. Partition Plat No. 2012-047 is also attached.

The purpose of this application is for construction of a dwelling on Parcel 2. The applicant needs to demonstrate that the Leuthe's Measure 49 approval (E118605) is still valid since the property has been sold to Katie Miranda & Ahmed Al Ali. Katie Miranda & Ahmed Al Ali have seven years to construct the dwelling since the property originally closed with the Luethe's in 2018 (which started the 10-year clock). Additional criteria include Commercial Forest Use 2 standards, Variance criteria to Forest Practices Setbacks, HEC and HDP standards, and a Variance to the Secondary Fire Safety Zone. These criteria were all addressed previously but the land use applications have expired. Katie Miranda & Ahmed Al Ali intend to construct a residence with similar setbacks to that that which was approved by the Hearing's Officer in Case T3-2015-3856.

As shown on the attached plans and photos, the Luethe's imported fill in 2016 along the access road and hillside for stabilization. GeoPacific Engineers has studied this portion of the development site, and Northwest Surveying, Inc. has provided an updated topographic survey of this area (attached). GeoPacific Engineers recommend in their report (also attached), a minimum 20-ft. setback from the "break in slope" which extends generally northwest to southeast through the center of the parcel. They have evaluated the fill activities that occurred and determined that the fill was properly conducted and is stable. They do not recommend stormwater be infiltrated onto the slope (the plan infiltrates well below the top of slope to the east). The proposed dwelling, therefore, is located on the southwest portion of the site a minimum of 40-ft. from the west property line and 80-ft. from the south property line as approved in Case T3-2015-3856 (attached).

The previously-approved homesite with approximate area of 3,300 sq. ft. is maintained with the new proposed home location. The attached plans demonstrate that the proposed approximate 1,500 sq. ft. building footprint fits within the previously-approved area. The future home will be designed with enhanced 13 D fire sprinklers, fire retardant roofing and a spark arrestor over the chimney to provide maximum protection to surrounding forest properties.

The Tualatin Valley Fire & Rescue District Deputy Fire Marshal Drew DeBois has previously visited the site in 2014 and reviewed the current site plan. The Fire Agency Review form is attached.

A complete site description and project history is provided in both Case T3-2012-2097 and Case T3-2015-3856. Additional information is provided later in this report and attached exhibits. In summary, the Parcel 2 location was chosen because the west portion of the site was relatively level and clear of trees. The home site has an approved area for a septic system on the south portion of the site. It is also adjacent to a large open area to the west and south generally void of timber including a 60-ft. access purchased by METRO. Although portions of this area off-site could be restocked with timber in the future, it is unlikely in the immediate area adjacent to the homesite to the west because it provides access to the METRO property and this area is presently in farm use, not forest use (hay).

Detailed site, grading and erosion control plans have been prepared for the proposed home site. As shown on the attached exhibits, the future home is located as far east and north as practicable, given the topographic and access site constraints. The home is located approximately 50-ft. from the "break in slope" on the east side (after fill activities in 2016), and 40-ft. from the property line on the west side adjacent to the METRO-owned 60-ft. wide access. It is also located a minimum of 80-ft. from the south property line and at the approved 80-ft. setback line from the north property line.

Regarding grading, erosion control and stormwater management, the attached exhibits are provided to demonstrate site grading and drainage above the break in slope is feasible. A sealed rain garden or storm detention facility is provided with flow dispersal trench, is proposed to limit impacts of stormwater from the house rain drains and driveway on the slope. Storm water disposal can be slowed to pre-development levels and placed safely on the east side of the site – away from the slope and septic drain field as recommended by Geopacific Engineers. Stormwater will then be conveyed down-slope towards the bottom and the east property line. This will keep storm water from eroding the slope or impacting the drain field. Final grading, drainage and erosion control plans will be prepared prior to building permit submittal in accordance with the conditions of this application.

As noted, the home will maintain a minimum 80-ft. setback from the south property line also adjacent to an area on the METRO property which is presently void of trees. The setback is much greater to the southeast – more than 100-ft. above the “break in slope” and more than 180-ft. to the east and northeast. Related exhibits provide profiles, details and a slope analysis which graphically provide evidence that the proposed homesite is located in the only practical site on the parcel.

Finally, the applicant has proposed a wildlife conservation plan for portions of Parcel 2 since the proposed homesite is greater than 500-ft. from a public road as required in MCC 39.5860. The plan, includes revegetation of approximately 28,000 sq. ft. of degraded area with native blueberries and huckleberries. This revegetation area represents a 2:1 mitigation for that area in the Parcel 2 “flag-pole” which may be impacted by gravel road access (See attached).

Findings in support of the setback variance approved in Case T3-2015-3856 and related applications are as follows.

IV. FINDINGS

MULTNOMAH COUNTY COMPREHENSIVE PLAN

COMMENT:

Except where required by the Multnomah County Code, this application is not required to address goals and policies related to the development of land, since the Multnomah County Comprehensive Plan is implemented by the code.

Modification of Conditions Established in Prior Case Measure 49 Forest Dwelling Review

COMMENT:

This application demonstrates compliance with DLCD Measure 49 Conditions.

Mr. & Mrs. Luethe; received Measure 49 Final Order and Home Site Authorization #E118605 from the Oregon Department of Land Conservation and Development dated September 22, 2009. On Page 5 of that Decision, the Final Order concludes that “the three home site approvals the claimants qualify for under Section 6 of Measure 49 will authorize the claimants to establish up to one additional lot or parcel and two additional dwellings on the Measure 37 claim property.”

Partition Plat No. 2012-047 has been recorded creating the one additional lot authorized by the order (two original lots of record were re-recorded resulting in a 3-parcel partition). This order authorized two additional dwellings to be constructed on Parcels 2 & 3. The applicable conditions related to the dwellings since the lots have already been created are as follows:

1. Each dwelling must be on a separate lot or parcel, and must be contained within the property on which the claimants are eligible for Measure 29 relief...

COMMENT:

This proposal is to construct a dwelling on Parcel 2 of Partition Plat No. 2012-047, a lawfully created lot of record approved per Final Order and Home Site Authorization #E118605 and Case T3-2012-2097.

2. This home site authorization will not authorize the establishment of a land division or dwelling in violation of a land use regulation described in ORS 195.305(3) or in violation of any other law that is not a land use regulation as defined by ORS 195.300(14).

COMMENT:

This proposal to construct a dwelling does not violate ORS 195.305(3), or any other law that is not a land use regulation as defined by ORS 195.300(14).

3. A claimant is not eligible for more than 20 home site approvals...

COMMENT:

This proposal is to construct a single home. Total number of M49 homes authorized to Mr. & Mrs. Lueth are three dwellings (including the existing home). Parcel 2 has now been sold to Katie Miranda & Ahmed Al Ali.

4. The number of lots, parcels or dwellings a claimant may establish under this home site authorization is reduced by the number of lots, parcels and dwellings currently in existence...

COMMENT:

Partition Plat No. 2012-047 created one additional parcel since two legal tax lots existed previously. Two new homes are authorized since there is one existing home on the M49 property. This application is for the homesite on Parcel 2.

5. Temporary dwellings are not considered in determining the number of existing dwellings...

COMMENT:

No temporary dwellings exist on the property.

6. A home site approval only authorizes the establishment of a new lot, parcel or dwelling on the property on which the claimants are eligible for Measure 49 relief...

COMMENT:

The proposed dwelling is located on property authorized by the M49 approval.

7. The claimants may use a home site approval to convert a lot, parcel or dwelling currently located on the property on which the claimants are eligible for Measure 49 relief to an authorized home site...

COMMENT:

No lot or dwelling conversion is proposed.

8. The claimants may not implement the relief described in this Measure 49 Home Site Authorization if a claimant has been determined to have a common law vested right to a use...

COMMENT:

This condition is not applicable to this application or the M49 approval.

9. A home site approval does not authorize the establishment of a new dwelling on a lot or parcel that already contains one or more dwellings...

COMMENT:

Parcel 2 is currently vacant.

10. Because the property is located in a forest zone, the home site authorization does not authorize new lots or parcels that exceed five acres...

COMMENT:

Parcel 2 is 2.0 acres in area.

11. Because the property is located in a forest zone, Measure 49 requires new home sites to be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use. Further, if an owner of the property is authorized by other home site authorizations...

COMMENT:

This condition was implemented by Case T3-2012-2097. Parcel 3 (also currently vacant) was established as the remnant parcel for forest use.

12. If the claimants transferred ownership interest in the Measure 37 claim property prior to the date of this order...

COMMENT:

Mr. & Mrs. Luethe have transferred ownership interest in the Measure 37 property, Parcel 2, in 2018.

13. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit...

COMMENT:

The new owners (Katie Miranda & Ahmed Al Ali) are aware that the building permit is required to develop the site.

MULTNOMAH COUNTY CODE

CHAPTER 39

PART 4 – BASE ZONES

PART 4.A.1 – COMMERCIAL FOREST USE DISTRICTS (CFU)

39.4050- PURPOSES.

- (A) The purposes of the Commercial Forest Use Base Zones (CFU) are to conserve and protect designated lands for continued commercial growing and harvesting of timber and the production of wood fiber and other forest uses; to conserve and protect watersheds, wildlife habitats and other forest associated uses; to protect scenic values; to provide for agricultural uses; to provide for recreational opportunities and other uses which are compatible with forest use; implement applicable Comprehensive Plan policies, and to minimize potential hazards or damage from fire, pollution, erosion or urban development.
- (B) One of the implementation tools to carry out the purposes of the CFU is a Lot of Record requirement to group into larger "Lots of Record" those contiguous parcels and lots that were in the same ownership on February 20, 1990. This requirement is in addition to all "tract" grouping requirements of State Statute and Rule.
- (C) The CFU Base Zones are: CFU, CFU-1, CFU-2, CFU-3, CFU-4, and CFU-5. These zones may be referred to collectively as the "CFU" because all standards and requirements applicable to the specific CFU base zone itself also apply to each of the other zones except as expressly stated otherwise.

39.4055 AREA AFFECTED.

MCC 39.4050 through 39.4155 shall apply to those lands designated CFU (CFU, CFU-1, CFU-2, CFU-3, CFU-4, and CFU-5) on the Multnomah County Zoning Map.

COMMENT:

The site is located in the CFU-2 zone.

39.4110 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES.

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

Table 1.

Use Description of use and location	Forest Practice Setbacks		Fire Safety Zones	
	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements
Template Dwelling	N/A	30	130	Primary &Secondary required

COMMENT:

Although this is a Measure 49 dwelling rather than a template dwelling, the same setbacks apply.

(A) Reductions to a Forest Practices Setback dimension shall only be allowed pursuant to approval of an adjustment or variance.

COMMENT:

The applicant requests approval of a variance to reduce the Forest Practices setback on the north and south from 120-ft. to 80-ft., and the west side to 40-ft. Previous approvals granted these setbacks (reduced to 40-ft. on the west side per Case T3-2015-3856).

(B) Exception to the Secondary Fire Safety Zone shall be pursuant to MCC 39.4155 only. No reduction is permitted for a required Primary Fire Safety Zone through a nonconforming, adjustment or variance process.

COMMENT:

The 30-ft. Primary Fire Safety Zone is maintained on all sides. An Exception to the Secondary Fire Safety Zone is requested to 50-ft. on the south and north sides, and 10-ft. on the west side. Again, these reductions were approved per Case T3-2015-3856 (reduced to 10-ft. on the west side in previous application).

(C) The minimum forest practices setback requirement shall be increased where the setback abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional setback requirements in consultation with the Road Official.

COMMENT:

This section is not applicable.

(D) Fire Safety Zones on the Subject Tract.

(1) Primary Fire Safety Zone.

(a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

(b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended farther down the slope from a dwelling or structure as follows:

(c) The building site must have a slope less than 40 percent.

COMMENT:

No trees are located within the 30-ft. Primary Fire Safety Zone on all sides. Slope of this area is less than 10%

(2) Secondary Fire Safety Zone.

A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 39.4155.

COMMENT:

No trees are located within the reduced Secondary Fire Safety Zone to the north, south and west. Tree are located downslope to the east. They shall be limbed in accordance with these standards.

(3) No requirement in (1) or (2) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

COMMENT:

Trees will be managed within the firebreaks where proposed – particularly downslope to the east.

- (4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.**

COMMENT:

Required Primary and Secondary Fire Safety Zones are provided on the attached plans in accordance with the standards in Table 1 as modified by the variance request.

- (5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).**

COMMENT:

The property owner will maintain the firebreaks as required.

39.4115: DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES

All dwellings and structures shall comply with the approval criteria in (B) through (D) below except as provided in (A):

- (A) For the uses listed in this subsection, the applicable development standards are limited as follows:**

COMMENT:

This section is not applicable.

- (B) New dwellings shall meet the following standards in (1) and (3) or (2) and (3); restored or replacement dwellings greater than 100-feet from an existing dwelling, and accessory buildings (or similar structures) greater than 100-feet from the existing dwelling shall meet the following standards in (1) and (3) or (2) and (3):**

- (1) The structure shall satisfy the following requirements:**

- (a) To meet the Forest Practices Setback, the structure shall be located a minimum of 30-feet from a front property line adjacent to a county maintained road and 130-feet from all other property lines;**
- (b) The structure shall be located in a cleared area of at least 10,000 square feet that meets the tree spacing standards of a primary fire safety zone;**
- (c) The entirety of the development site is less than 30,000 square feet in total cleared area, not including the drive-way;**

- (d) The structure is sited within 300-feet of frontage on a public road and the driveway from the public road to the structure is a maximum of 500-feet in length;
- (e) The local Fire Protection District verifies that their fire apparatus are able to reach the structure using the proposed driveway; or

COMMENT:

The proposed dwelling does not comply with all of the above standard, therefore subsections (B)(2) and (B)(3) are addressed as follows:

(2) The structure shall satisfy the following requirements:

- (a) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 39.4110;

COMMENT:

The proposed plan has the least impact on surrounding lands based on the location of the proposed dwelling. As shown on Exhibit 2, the proposed dwelling is adjacent to hay fields to the west. The proposed dwelling complies with the primary fire break standards of MCC 39.4110 which includes 30-ft. to the west and north, and 80-ft. to the south and east with modified secondary firebreaks to the south, north, southeast and east. A 10-ft. secondary fire break is proposed to the west. The proposal has the least impacts to surrounding farm and forest uses since no farm or forest use exists within at least 100-ft. to the west since this area is the access used by METRO to service the property. Regarding the adjacent METRO property to the south, the proposed home is located 80-ft. from the property line and at a higher elevation. Any future farm or forest uses would be located at a lower elevation since this area slopes away from the house at 10% or greater. Application of pesticides or other chemicals typically used in managed farm or forest uses would be at a lower elevation than the residence – thus limiting impacts to the adjoining forest lands. Additionally, fire danger risks to adjacent forest and agricultural lands are minimized since proposed home will install an enhanced 13 D (fire sprinkler) system and provide the Class A envelope, as required by the Fire Marshal.

- (b) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

COMMENT:

The proposed plan preserves all forestlands on-site for future operations. There are no farm uses on the parent parcel. The proposed dwelling is located on the only buildable portion of the parcel away from the steep, natural portion of the site.

- (c) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;**

COMMENT:

The plan minimizes impacts due to road construction to the extent practicable. No impact to forestland is expected due to road construction for the Parcel 2 private road/driveway access within the flag-pole. The flag-pole is located in the field around the existing Luethe residence and shops, and no tree removal is required. The proposed route was constructed in 2016 constructed on fill placed on the site in 1995 (the southeast portion of which is included in the Hillside Development Permit to legalize the fill), and additional fill placed in 2016. No impacts to forestland are proposed with this plan.

- (d) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**

COMMENT:

The access road within the Parcel 2 flag-pole is the minimum length possible due to unique limitations on the property. Access to the homesite must be provided from NW McNamee Road within the flag-pole approved through Case T3 2012-2097. The Parcel 1 & Parcel 2 site is located on a long-narrow north-south bluff separated by the METRO parcel to the west and a steep slope to the east. The access road to Parcel 2 must, therefore, run from NW McNamee Road on the north to the homesite on the south – a direct-line distance of approximately 500-ft. The flag-pole was platted in a manner, however, which retained the Luethe residence and two shop buildings on Parcel 1 with the minimum 30-ft. setback from the buildings. Additionally, the flag-pole and access road was required to be located at least 25-ft. from the existing Luethe septic drain field. This resulted in an access flag more than 700-ft. long. These physical limitations are unique to the site resulting in a longer access road.

- (3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:**

- (a) Access roadways shall be approved, developed and maintained in accordance with the requirements of the structural fire service provider that serves the property. Where no structural fire service provider provides fire protection service, the access roadway shall meet the Oregon Fire Code requirements for fire apparatus access;**
- (b) Access for a pumping fire truck to within 15 feet of any perennial water source of 4,000 gallons or more within 100 feet of the driveway or road on the lot. The access shall meet the fire apparatus access standards of the Oregon Fire Code with permanent signs posted along the access route to indicate the location of the emergency water source;**

COMMENT:

The site is within the TVF&R District. A 4,000 gallon water supply shall be provided on-site adjacent to the driveway access.

(C) The dwelling or structure shall:

- (1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**
- (2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;**
- (3) Have a fire retardant roof; and**
- (4) Have a spark arrester on each chimney.**

COMMENT:

The proposed site-built home will be built in accordance with these standards.

(D) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 1 stream as defined in the Forest Practices Rules.

- (1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.**
- (2) Evidence of a domestic water supply means:**
 - (a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or**
 - (b) A water use permit issued by the Water Resources Department for the use described in the application; or**
 - (c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.**

COMMENT:

The applicant will construct a well prior to completion of the home. The well will be exempt from permitting requirements under ORS 537.545. The well contractor's report will be filed upon completion of the well.

SECTION 39.8200 ADJUSTMENTS AND VARIANCES

39.8200- ADJUSTMENTS AND VARIANCES; GENERALLY.

(A) MCC 39.8200 through MCC 39.8215 (Adjustments and Variances) are designed to implement the Policies of the Comprehensive Plan. However, it is also recognized that because of the diversity of lands and properties found in the county there should be a zoning provision that permits justifiable departures from certain Zoning Code dimensional standards where literal application of the regulation would result in excessive difficulties or unnecessary hardship on the property owner.

COMMENT:

The applicant requests a setbacks variance to the 130-ft. forest setback standard for a proposed dwelling. An 80-ft. setback had been approved through an Adjustment in Case T3-2012-2097, and a greater encroachment into the 130-ft. setback requires a variance.

(B) To address those situations, modification of the dimensional standards given in MCC 39.8205 may be permitted if the approval authority finds that the applicant has satisfactorily addressed and met the respective approval criteria in MCC 39.8210, Adjustments, or 39.8215, Variances. If an Adjustment or Variance request is approved, the approval authority may attach conditions to the decision to mitigate adverse impacts which might result from the approval.

COMMENT:

The request for a variance is addressed in the approval criteria below.

(C) The Adjustment review process provides a mechanism by which certain dimensional standards may be modified no more than 40 percent if the proposed development continues to meet the intended purpose of the regulations. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the regulation.

(D) The Variance review process differs from the Adjustment review by providing a mechanism by which a greater variation from the standard than 40 percent may be approved for certain zoning dimensional requirements. The Variance approval criteria are based upon the traditional variance concepts that are directed towards consideration of circumstances or conditions on a subject property that do not apply generally to other properties in the same vicinity.

(E) All proposed modification of the dimensional standards given in MCC 39.8205(A)(2) shall be reviewed under the Variance review process regardless of the proposed percentage modification.

COMMENT:

The applicant requests a setbacks variance to the 130-ft. forest setback standard for a proposed dwelling. Since the request reduces the setback to 40-ft. on the west side of the dwelling and 80-ft. on the south side of a dwelling, the variance approval criteria of 39.8205(A)(2) must be addressed.

39.8205 SCOPE

- (A) Dimensional standards that may be modified under an Adjustment review (modified no more than 40 percent) are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:
- (1) Reduction of resource protection setback requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) overlay districts are prohibited. Additionally, reductions to the fire safety zones in the Commercial Forest Use zones are not allowed under the Adjustment process; and
 - (2) Reduction of yards and setback requirements within the Geologic Hazards Overlay (GH) shall only be reviewed as a Variance; and
 - (3) Reduction of yards/setback/buffer/resource protection setback requirements within the Large Fills, Mineral Extraction, and Radio and Television Transmission Towers Code Sections and any increase to the maximum building height shall only be reviewed as Variances; and
 - (4) Minor modification of yards and setbacks in the off-street parking and design review standards are allowed only through the “exception” provisions in each respective Code section.

COMMENT:

As noted above, the request is for a variance.

- (B) Dimensional standards that may be modified under a Variance review are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, building height, sign height, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:
- (1) Reduction of resource protection setback requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) overlays; and
 - (2) Modification of fire safety zone standards given in Commercial Forest Use base zones; and
 - (3) Increase to any billboard height or any other dimensional sign standard.

COMMENT:

The request is to modify the 130-ft. forest practices setback as authorized by this subsection.

- (C) The dimensional standards listed in (A) and (B) above are the only standards eligible for Adjustment or Variance under these provisions. Adjustments and Variances are not allowed for any other standard including, but not limited to, minimum lot area, modification of a threshold of review (e.g. cubic yards for a Large Fill), modification of a definition (e.g. 30 inches of unobstructed open space in the definition of yard),

modification of an allowed density in a Planned Development or houseboat moorage, or to allow a land use that is not allowed by the Base zone.

COMMENT:

The forest practices setback is a dimensional standard eligible for a variance.

39.8210 ADJUSTMENT APPROVAL CRITERIA

The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through (E) are met:

COMMENT:

A variance is requested.

39.8215 VARIANCE APPROVAL CRITERIA.

The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through (F) are met:

(A) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. The circumstance or condition may relate to:

(1) The size, shape, natural features and topography of the property, or

COMMENT:

As shown on the attached exhibits, the applicant requests a variance to reduce the 130-ft. forest practices setback for construction of a residence to 40-ft. on the west side and 80-ft. on the south side of the structure. These are the setbacks which were approved previously in Case T-3-2015-3856. Residential uses are specifically permitted on Parcel 2 per Measure 49 Final Order E118605 and Case T3-2012-2097. Special circumstances, however, apply to the site necessitating encroachment into the 130-ft. forest practices setback due to steep terrain on the east side of the parcel. A "break in slope" extends from the southeast to the northwest portion of the site. According to the applicant's Geotechnical Engineer, GeoPacific Engineers recommend a 20-ft. setback from the "break in slope." With these restrictions, the buildable area of the site is considerably reduced restricting the use to a greater degree than that for other properties in the vicinity or district.

In addition to the size of the level portion of the site, the shape of the buildable area of the site is not typical to other properties nearby as shown on the existing conditions plan for off-site properties. The buildable area restricted by the previously-adjusted 130-ft. forest practices setback to 80-ft. on the west side (per Case T3-2012-2097) and 30-ft. slope setback to a 1,380 sq. ft. "triangle-shaped" building footprint – again not typical in size or shape to other residences in the vicinity.

(2) The location or size of existing physical improvements on the site, or

COMMENT:

There are no existing physical improvements on the site since it is vacant. However, as noted above, the conditions of Case T3-2012-2097 restrict the buildable area to 1,380 sq. ft.

(3) The nature of the use compared to surrounding uses, or

COMMENT:

As shown on the attached exhibits, there are other large homes on surrounding properties which did not have the fire setback restrictions which this home is subject to.

(4) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or base zone, or

COMMENT:

The buildable area restricted by the previously-adjusted 130-ft. forest practices setback to 80-ft. (per Case T3-2012-2097), and 30-ft. slope setback to a 1,380 sq. ft. "triangle-shaped" building footprint – again not typical in size or shape to other residences in the vicinity. The submitted exhibits graphically demonstrate that some surrounding homesites are significantly larger than what would be permitted on-site without the benefit of a setbacks variance.

(5) A circumstance or condition that was not anticipated at the time the Code Requirement was adopted.

COMMENT:

The circumstances for creation of 2-acre parcels in the Forest zones which is permitted by Measure 49 could not have been anticipated at the time this Code requirement was adopted. Before the adoption of Measure 49, partitions in the forest zones for the purpose of creating a homesite were generally not permitted since minimum lot size is 80 acres. Therefore, it was assumed that a 130-ft. setback could easily be met for a proposed home on large parcels in the forest zones.

(6) The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.

COMMENT:

Other considerations in support of the variance include Fire District conditional approval of the site demonstrating that impacts to surrounding properties will be minimized.

(B) The circumstance or condition in (A) above that is found to satisfy the approval criteria is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

COMMENT:

The applicant applied for the Measure 49 partition in accordance with Final Order E118605 and Case T3-2012-2097. Creation of Parcel 2 was the result of a detailed site analysis of buildable sites on the parent parcel (former Tax Lots 2N1W 32B 700 & 800). There is sufficient evidence in the Case T3-2012-2097 record that the location, shape, size, dimensions and frontage requirements was determined by existing topography, environmental concern, septic system requirements and access standards. There were only two possible building sites on the west side of the ravine, and a single site on the east side. The site constraints listed above were not due to the applicant's making or did it result solely from personal circumstances.

(C) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.

COMMENT:

As shown on the attached exhibits and discussed throughout this report, the allowable building footprint results in a practical difficulty and unnecessary hardship to the property owner based on small size and triangle buildable dimension.

(D) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zoning district in which the property is located, or adversely affects the appropriate development of adjoining properties.

COMMENT:

The proposed variance will not be materially detrimental to the public welfare or injurious to adjacent property owners since there is no farm use or commercially managed forest use to the west or south. The METRO property is not commercially managed for timber harvest – rather it will be protected from harvest and development. The Tualatin Valley Fire & Rescue Deputy Fire Marshal, Drew DeBois has reviewed the site plan and provided conditions requiring the following:

- *A full primary fire break*
- *Class A fire retardant roof covering*
- *Class A fire retardant exterior siding-cladding*
- *An enhanced NFPA 13 D fire sprinkler system throughout the home inclusive of the garage with a minimum of a 500 gallon water supply.*

The proposed home will comply with the above conditions in addition to the previously-approved access standards for the driveway and hammerhead.

(E) The Variance requested is the minimum necessary variation from the Code requirement which would alleviate the difficulty.

COMMENT:

As shown on the site plan, the requested variance is the minimum necessary to provide an acceptable residential footprint on the site. The buildable area requested is approximately

3,750 sf, which includes the area for a garage. It is not a square area for a house but the building footprint is approximately 1,500 sq. ft.

- (F) Any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

COMMENT:

Impacts – if any- to adjacent properties can be mitigated. However, since the concern is forest setbacks, no additional trees/vegetation between the proposed home and the property lines would be appropriate. Based on the requirements by Tualatin Valley Fire & Rescue listed above, impacts to surrounding forest lands is already mitigated with 13 D fire sprinklers with water supply, Class A fire retardant roofing and siding, and the primary fire break (to the west and south) along with secondary fire break in other directions.

SECTION 39.4155: EXCEPTIONS TO SECONDARY FIRE SAFETY ZONES

- (A) The secondary fire safety zone for dwellings and structures may be reduced pursuant to the provisions of 39.4155 (B) when:
- (1) The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or
 - (2) The dwelling or structure is proposed to be located within 130 feet of the centerline of a public or private road serving two or more properties including the subject site; or
 - (3) The proposed dwelling or structure is intended to be located within 130 feet of a legally existing dwelling or structure.

COMMENT:

Parcel 2 has an average lot width of less than 330-ft. The proposed dwelling is located within 130-ft of the proposed private road serving the site. Specifically, the dwelling is located at the terminus of a private road which also serves the existing dwelling on Parcel 1.

- (B) Exceptions to secondary fire safety zones shall only be granted upon satisfaction of the following standards:
- (1) If the proposed secondary fire safety zone is between 50 and 100 feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban- Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended, or
 - (2) If the proposed secondary fire safety zone is less than fifty feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, and

- (3) There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure; and
- (4) A dwelling shall have a central station monitored alarm system if the secondary fire safety zone equivalents of subsection (B) (1) above are utilized, or
- (5) A dwelling shall have a central station monitored 13D sprinkler system if the secondary fire safety zone equivalents of subsection (B) (2) above are utilized.

Exception: Expansions of existing single family dwellings as allowed by MCC 39.4075 (A) shall not be required to meet this standard, but shall satisfy the standard of MCC 39.4115(C)(3).

- (6) All accessory structures within the fire safety zone setbacks required by MCC 39.4110, and all accessory structures within 50 feet of a dwelling, shall have a central monitored alarm system.
- (7) All accessory structures within 50 feet of a building containing shall have exterior walls constructed with materials approved for a minimum of one-hour-rated fire-resistive construction, heavy timber, log wall construction or constructed with noncombustible materials on the exterior side.
- (8) When a detached accessory structure is proposed to be located so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have all underfloor areas enclosed to within 6 inches of the ground, with exterior wall construction in accordance with Section 504.5 of the International Fire Code Institute Urban- Wildland Interface Code Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, or underfloor protection in accordance with Section 504.6 of that same publication.

Exception: The enclosure may be omitted where the underside of all exposed floors and all exposed structural columns, beams and supporting walls are protected as required for exterior one-hour-rated fire-resistive construction or heavy-timber construction.

COMMENT:

The secondary firebreak for the proposed dwelling will be reduced to 20-ft. on the west, and less than 100-ft. to the south, north and southeast (due to the proximity of property lines). The dwelling will be fitted with an enhanced 13 D fire sprinkler system and alarms as required. No combustible fencing will be constructed within 12-ft. of the dwelling. No accessory buildings are proposed at this time. However, future property owners shall comply with this code if they choose to construct an accessory structure.

5.H - SIGNIFICANT ENVIRONMENTAL CONCERN

SECTION 39.5500: PURPOSES

The purposes of the Significant Environmental Concern Overlays, MCC 39.5500 through MCC 39.5860 (collectively, the "SEC") are to protect, conserve, enhance, restore, and maintain significant natural and human-made features which are of public value, including among

other things, river corridors, streams, lakes and islands, domestic water supply watersheds, flood water storage areas, natural shorelines and unique vegetation, wetlands, wildlife and fish habitats, significant geological features, tourist attractions, archaeological features and sites, and scenic views and vistas, and to establish criteria, standards, and procedures for the development, change of use, or alteration of such features or of the lands adjacent thereto.

SECTION 39.5505: AREAS AFFECTED

(A) Except as otherwise provided in MCC 39.5510 or MCC 39.5515, the SEC shall apply to those lands designated SEC on the Multnomah County Zoning Map consisting of the following resource area designations:

COMMENT:

The site is designated SEC-h and SEC-s on the Multnomah County Zoning Map.

39.5520 APPLICATION FOR SEC PERMIT.

An application for an SEC permit for a use or for the change or alteration of an existing use on land designated SEC, shall address the applicable criteria for approval, under MCC 39.5540 through 39.5860.

(A) An application for an SEC permit shall include the following:

- (1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC 39.5540 through 39.5860.
- (2) A map of the property showing:
 - (a) Boundaries, dimensions, and size of the subject parcel;
 - (b) Location and size of existing and proposed structures;
 - (c) Contour lines and topographic features such as ravines or ridges;
 - (d) Proposed fill, grading, site contouring or other landform changes;
 - (e) Location and predominant species of existing vegetation on the parcel, areas where vegetation will be removed, and location and species of vegetation to be planted, including landscaped areas;
 - (f) Location and width of existing and proposed roads, driveways, and service corridors.

COMMENT:

The above information was provided in the original application as modified by this proposal. Specifically, the access road and homesite location for Parcel 2 was approved through Case T3-2012-2097. In 2016 some additional grading was performed for construction of the road. All the applicable information is provided on the submitted plans and reports.

39.5850- SEC-H CLEAR AND OBJECTIVE STANDARDS.

- (A) At the time of submittal, the applicant shall provide the application materials listed in MCC 39.5520(A) and 39.5860(A). The application shall be reviewed through the Type I procedure and may not be authorized unless the standards in MCC 39.5860(B)(1) through (4)(a)- (c) and (B)(5) through (7) are met. For development that fails to meet all of the criteria listed above, a separate land use application pursuant to MCC 39.5860 may be submitted.
- (B) The proposed development shall meet the applicable storm water and grading and erosion control requirements of MCC 39.6200 through 39.6235. Ground disturbance within 100 feet of a watercourse as defined by MCC 39.2000 shall be limited to the period between May 1st and September 15th. Revegetation and soil stabilization must be accomplished no later than October 15th.
- (C) The nuisance plants listed in MCC 39.5580 Table 1 shall not be used as landscape plantings within the SEC-h Overlay Zone.
- (D) For development that fails to meet all of the standards listed in this section, a separate land use application pursuant to MCC 39.5860 may be submitted.

COMMENT:

No ground disturbance is proposed within 100-ft. from the creek. Revegetation will be with native plants.

39.5860 CRITERIA FOR APPROVAL OF SEC-H PERMIT -WILDLIFE HABITAT.

- (A) In addition to the information required by MCC 39.5520 (A), an application for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:
 - (1) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas; For the purposes of this section, a *forested area* is defined as an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry. A *non-forested "cleared"* area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan.
 - (2) Location of existing and proposed structures;
 - (3) Location and width of existing and pro-posed public roads, private access roads, driveways, and service corridors on the subject parcel and within 200 feet of the subject parcel's boundaries on all adjacent parcels;

- (4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties and on properties entirely or partially within 200 feet of the subject property.

COMMENT:

All forested areas and cleared areas on site and adjacent to the property have been included on the Existing Conditions plan or Aerial Photo. There are non-forested cleared areas adjacent to the Parcel 2 homesite.

(B) Development standards:

- (1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.
- (2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.
- (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

COMMENT:

Development of the dwelling will occur only in the non-forested "cleared" areas. Development of the Parcel 2 dwelling and access road will be greater than 200-ft. from NW McNamee Road and its access road will be greater than 500-ft. in length - it is approximately 700-ft. in length. The longer road length is the least impacting design which will preserve natural areas while providing adequate area for septic drain field with replacement area. A wildlife conservation plan is proposed for Parcel 2 since the access road through the flag-pole exceeds 500-ft. This plan was approved per Case T3-2012-2097, however the applicant is requesting that the approximate 28,000 sq. ft. mitigation area will be planted with native blueberries and huckleberries.

The modification results in the minimum departure from these standards while providing reasonable clearance between the proposed dwelling and south terminus of the hammerhead for residential parking and vehicle maneuvering. As shown on the attached exhibits, the proposed home is located more than 30-ft. from the "break in slope" which runs from southeast to northwest towards the hammerhead. No structure can be constructed within the 30-ft. "break in slope."

- (4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:
 - (a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or

- (b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.
- (c) Diagram showing the standards in (a) and (b) above.
- (d) The standards in this subsection (4) may be modified upon a determination by the County Road Official that the new access road/driveway approach would result in an unsafe traffic situation using the standards in the Multnomah County "Design and Construction Manual," adopted June 20, 2000, (or all updated versions of the manual). Standards to be used by the Road Official from the County manual include Table 2.3.2, Table 2.4.1, and additional referenced sight distance and minimum access spacing standards in the publication A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO) and the Traffic Engineering Handbook by the Institute of Transportation Engineers (ITE).
 - 1. The modification shall be the minimum necessary to allow safe access onto the public road.
 - 2. The County Road Official shall provide written findings supporting the modification.

COMMENT:

This section was addressed and approved per Case T3-2012-2097.

- (5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.

COMMENT:

This section was approved per Case T3-2012-2097 and complies with this standard.

- (6) Fencing within a required setback from a public road shall meet the following criteria:
 - (a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.
 - (b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.
 - (c) Cyclone, woven wire, and chain link fences are prohibited.
 - (d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.
 - (e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the

development, and the front yard setback line parallel to the public road serving the development.

- (7) The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:

COMMENT:

No new fencing is proposed at this time for the proposed homesite. Any new fences shall comply with the above standards. No nuisance plants are proposed on the two sites.

- (C) **Wildlife Conservation Plan.** An applicant shall propose a wildlife conservation plan if one of two situations exist.

- (1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or
- (2) The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (B).
- (3) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(5), the wildlife conservation plan must demonstrate the following:
 - (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.
 - (b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.
 - (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.
 - (d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property. (e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.

COMMENT:

A Wildlife Conservation Plan has been approved for Parcel 2 per Case T3-2012-2097 and no significant changes are proposed with this modification with the exception that the mitigation area is slightly larger than originally proposal, and that the applicant is changing the native plan materials. The plan includes revegetation of approximately 28,000 sq. ft. with native

blueberries and huckleberries. This revegetation area represents a 2:1 mitigation for that area in the Parcel 2 “flag-pole” which may be impacted by gravel road access.

GEOLOGIC HAZARDS - GH

39.5070: PURPOSES

The purposes of the Geologic Hazards (GH) Overlay, MCC 39.5070 through MCC 39.5095, are to promote the public health, safety and general welfare, and minimize public and private losses due to earth movement hazards in specified areas and minimize erosion and related environmental damage in unincorporated Multnomah County, all in accordance with ORS 215, LCDC Statewide Planning Goal No. 7 and OAR 340- 41- 455 for the Tualatin River Basin, and the Multnomah County Comprehensive Plan policies relating to natural hazards. In addition, the GH is intended to:

- (A) Protect human life;
- (B) Protect property and structures;
- (C) Minimize expenditures for rescue and relief efforts associated with earth movement failures;
- (D) Control erosion, production and transport of sediment; and
- (E) Regulate land development actions including excavation and fills, drainage controls and protect exposed soil surfaces from erosive forces; and
- (F) Control stormwater discharges and protect streams, ponds, and wetlands within the Tualatin River and Balch Creek Drainage Basins.

39.5075: PERMITS REQUIRED

All persons proposing development, construction, or site clearing (including tree removal) on property located in hazard areas as identified on the Slope Hazard Map, or on lands with average slopes of 25 percent or more shall obtain a Geologic Hazard Permit as required in the GH, unless specifically exempted in MCC 39.5080.

COMMENT:

This section was addressed and approved per Case T3-2012-2097. No changes to the roadway design are proposed with this application. The grading permit for the access road has been issued and all the necessary fill activities were completed in 2016. No modification to the roadway design is proposed with this application.

An application for development subject to the GH shall include the following:

- (A) A map showing the property line locations, roads and driveways, existing structures, trees with 8-inch or greater caliper or an outline of wooded areas, watercourses and include the location of the proposed development(s) and trees proposed for removal.
- (B) An estimate of depths and the extent and location of all proposed cuts and fills.
- (C) The location of planned and existing sanitary drainfields and drywells.
- (D) Narrative, map or plan information necessary to demonstrate compliance with MCC 39.5090 (A). The application shall provide applicable supplemental reports, certifications, or plans relative to: engineering, soil characteristics, stormwater drainage, stream protection, erosion control, and/or replanting.
- (E) A Geologic Hazard Permit may be approved by the Director only after the applicant provides:
 - (1) Additional topographic information showing that the proposed development to be on land with average slopes less than 25 percent, and located more than 200 feet from a known landslide, and that no cuts or fills in excess of 6 feet in depth are planned. High groundwater conditions shall be assumed unless documentation is available, demonstrating otherwise; or
 - (2) A geological report prepared by a Certified Engineering Geologist or Geotechnical Engineer certifying that the site is suitable for the proposed development; or,
 - (3) A GHP Form- 1 completed, signed and certified by a Certified Engineering Geologist or Geotechnical Engineer with his/her stamp and signature affixed indicating that the site is suitable for the proposed development.
 - (a) If the GHP Form- 1 indicates a need for further investigation, or if the Director requires further study based upon information contained in the GHP Form- 1, a geotechnical report as specified by the Director shall be prepared and submitted.

COMMENT:

The above information is provided on the preliminary grading plan and in the GHP Form prepared by GeoPacific Engineering, Inc. The purpose of the Geologic Hazard Permit is to review the location of the proposed homesite relative to the adjacent steep slope. A report from GeoPacific dated March 5, 2021 is attached.

(F) Geotechnical Report Requirements

- (1) A geotechnical investigation in preparation of a Report required by MCC 39.5085 (E) (3) (a) shall be conducted at the applicant's expense by a Certified Engineering Geologist or Geotechnical Engineer. The Report shall include specific investigations required by the Director and recommendations for any further work or changes in

proposed work which may be necessary to ensure reasonable safety from earth movement hazards.

- (2) Any development related manipulation of the site prior to issuance of a permit shall be subject to corrections as recommended by the Geotechnical Report to ensure safety of the proposed development.
 - (3) Observation of work required by an approved Geotechnical Report shall be conducted by a Certified Engineering Geologist or Geotechnical Engineer at the applicant's expense; the geologist's or engineer's name shall be submitted to the Director prior to issuance of the Permit.
 - (4) The Director, at the applicant's expense, may require an evaluation of GHP Form- 1 or the Geotechnical Report by another Certified Engineering Geologist or Geotechnical Engineer.
- (G) Development plans shall be subject to and consistent with the Design Standards For Grading and Erosion Control in MCC 39.5090 (A) through (D). Conditions of approval may be imposed to assure the design meets those standards.

COMMENT:

The applicant's Geotechnical Engineer, GeoPacific Engineers prepared a report for the original application and a second Geotechnical report dated March 21, 2021 which included the above. The current report specifically addresses the building site. As noted previously, GeoPacific Engineers recommends a minimum 20-ft. building setback from the "break in slope." The grading and erosion control plan, prepared by the applicant's engineer, indicates that no grading in proposed down-slope (east) of the "break in slope" and that erosion fencing and other measures are proposed above this area. A proposed flow dispersal trench is located southwest of the home and directed away from the septic drain field located south and southeast of the home.

V. CONCLUSION

Based on the above findings, the applicant has demonstrated compliance with the requirements of the relevant sections of the Multnomah County Code. Therefore, the request for Setbacks Variance and for a Modification of Conditions for Case T3-2012-2097 to modify the previous case approval including the Administrative Decision for implementation of state Measure 49 approval, Significant Environmental Concern for Wildlife Habitat (SEC-h) permit, Hillside Development permit for residential development, Exception to Secondary Fire Safety Zone, Forest Practices Standards and Setbacks for property in the CFU-2 zone should be approved.